

FILED
CLERK'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

2005 JAN 18 A 11:58

CHARLES V. RYAN IV on behalf of himself)
and on behalf of others similarly situated,)
Plaintiffs)

v.

ROBERT J. GARVEY, and PATRICK J.)
CAHILLANE in their individual capacities,)
Defendants)

Civil Action No.

05 - 30017 - MAP

RECEIPT # 305827
AMOUNT \$ 150.00
SUMMONS ISS. Y
LOCAL RULE 4.1
WAIVER OF SERV.
MCF ISSUED
AO 120 OR 121
BY DPTY CLK MLH
DATE 1/21/05

COMPLAINT

INTRODUCTION

1. This is a civil rights class action for declaratory and injunctive relief and money damages against Hampshire Sheriff Robert J. Garvey in his individual capacity for routine unconstitutional strip searches on intake of pre-arraignment detainees.

2. The named plaintiff Charles V. Ryan IV, seeks to represent a class of all people strip searched on or after January 18, 2002, without individualized reasonable suspicion at the Hampshire Jail and House of Correction due to the policies or practices of the defendant Hampshire Sheriff:

while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon or drugs or contraband or a violent felony, including arrests on a default or other warrant on charges that did not involve a weapon or drugs or contraband or a violent felony.

3. "Strip search" is used in this Complaint to refer to the inspection by a law enforcement officer of a person's bare breasts, buttocks, or genitals.

4. On information and belief, over a hundred people have been subjected to unconstitutional strip searches upon admission to the Hampshire Jail/House of Correction.

JURISDICTION

5. This action is brought pursuant to 42 U.S.C. §§1983 and 1988 and the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343.

PARTIES

6. Named plaintiff Charles V. Ryan IV was at all times relevant to this complaint a resident of the Commonwealth of Massachusetts. He is an attorney and former Hampshire County Commissioner. He was arrested at his home law office at approximately 4:45 p.m. on the Friday before a long weekend (Martin Luther King, Jr. holiday).

7. The defendant Robert J. Garvey was a resident of the Commonwealth of Massachusetts and the Hampshire Sheriff during the time period relevant to this complaint. He is sued in his individual capacity for actions he took under color of law.

8. The defendant Patrick J. Cahillane was a resident of the Commonwealth of Massachusetts and the Deputy Superintendent responsible for operation of the

Hampshire Jail and House of Correction during the time period relevant to this complaint. He is sued in his individual capacity for actions he took under color of law.

FACTS

9. At 4:45 p.m. on Friday, January 18, 2002, plaintiff Charles V. Ryan IV was arrested in Worthington, Massachusetts for allegedly violating a protective order two days earlier. The alleged violation consisted of driving by his ex-wife's home.

10. There was no allegation that the violation of the protective order involved violence or a threat of violence.

11. Mr. Ryan was taken by state police officers to the Russell State Police Barracks for booking.

12. State police officers then took Mr. Ryan to the Hampshire Jail and House of Correction to be held for his first court appearance on the following Tuesday morning, since Monday was a holiday.

13. On information and belief, it was the practice of State Police officers and other police officers in Hampshire County to bring pre-arraignment detainees to the Hampshire Jail and House of Correction to be held before a first court appearance when the person could not make bail.

14. On admission to the Jail and House of Correction, a correctional officer ordered Mr. Ryan to remove all of his clothing and submit to a strip search.

15. Because he had no choice, Mr. Ryan complied with the request. He removed his clothing and followed orders of the correctional officer to bend over.

16. The correctional officer visually inspected the plaintiff's nude body including his genitals.

17. The correctional officer had no reason to suspect that Mr. Ryan had any weapons or contraband hidden on his person.

18. After the strip search, the correctional officer told Mr. Ryan to change into a jail uniform.

19. Because the following Monday was a holiday, Mr. Ryan did not appear in court until Tuesday, January 22, 2002. On that day Sheriff's officers took Mr. Ryan to court. He was arraigned by the judge and released from custody.

20. The criminal charge against Mr. Ryan was dismissed a few months later in May 2002, when the Commonwealth filed a *nolle prosequi*.

21. Mr. Ryan suffered emotional distress as a result of the strip search. He was shocked by the incident. He felt humiliated, degraded, and violated.

22. The policy or practice established and/or maintained by Sheriff Garvey and implemented by defendant Cahillane was to require Hampshire Jail and House of Correction officers to view, without evaluating for individualized reasonable suspicion, the naked body of every person at the time of admission to the Hampshire Jail and House of Correction. This policy or practice applied regardless of the person's charges or anticipated duration of detention. The policy or practice directed employees of the Sheriff's Department to conduct illegal strip searches of the plaintiff and members of the plaintiff class.

CLASS ACTION ALLEGATIONS

23. This action is brought pursuant to Rule 23(a) and (b) (1) and (3) of the Federal Rules of Civil Procedure by the named plaintiff as a class action on behalf of all people strip searched on or after January 18, 2002, without individualized reasonable suspicion at the Hampshire Jail and House of Correction due to a policy or practice of Sheriff Garvey:

while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon or drugs or contraband or a violent felony, including arrests on a default or other warrant on charges that did not involve a weapon or drugs or contraband or a violent felony.

24. The named plaintiff, Charles V. Ryan IV, is a member of the class. The class represented by the plaintiff is so numerous that joinder of all such persons is impractical. On information and belief, the policy or practice described above has existed for several years, affecting hundreds of potential class members. It continued to exist for approximately one year after this incident until a policy that comports with constitutional standards was implemented.

25. There are questions of law and fact common to the class of plaintiffs. Central to all the claims is the nature and constitutionality of the policy or practice of Sheriff Garvey regarding intake strip searches without individualized reasonable suspicion of pre-arraignment detainees.

26. The named plaintiff's claims or defenses are typical of the claims or defenses of the class of plaintiffs.

27. The named plaintiff will fairly and adequately represent and protect the interests of the members of the class. Counsel for the plaintiff is experienced and capable in civil rights litigation. Class counsel has successfully represented plaintiffs in other class actions alleging unlawful strip searches. Counsel has the resources and expertise to prosecute this action.

28. This action is properly maintainable as a class action because the prosecutions of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the defendant.

29. This action is properly maintainable as a class action because the prosecutions of separate actions would create a risk of adjudications with respect to individual members of the class that would, as a practical matter, be dispositive of the interests of the other members who are not parties or would substantially impair or impede their ability to protect their interests.

30. As a direct result of policy or practice, class members have been subjected to unlawful strip searches, which has caused each member of the class to endure emotional distress, humiliation, and degradation.

CLAIM: 42 U.S.C. § 1983

31. The above paragraphs are incorporated herein.

32. Sheriff Garvey was the chief executive officer of the Hampshire Sheriff's Department. In this position he was responsible for establishing policies for correctional

officers and for supervising correctional officers at the Hampshire Jail and House of Correction.

33. At the time of this incident, the Sheriff's formal written policies for the Jail and House of Correction did not make any distinction in the level of cause needed to conduct a strip search of pre-arraignment detainees from the cause needed to strip search pre-trial detainees or convicted prisoners. The policy affirmatively permitted strip searches on a detainee's entrance into the facility without any reason to suspect the person had hidden contraband.

34. On information and belief every person who was required to put on a jail uniform during the class period was subjected to a strip search without regard for cause.

35. Sheriff Garvey implemented, knew, or should have known that there was a policy or practice of conducting strip searches, without individualized reasonable suspicion, at intake of pre-arraignment prisoners in violation of the United States Constitution. He had an obligation to correct this practice so that it would conform to the Constitution but instead he allowed it to continue.

36. Deputy Superintendent Cahillane was responsible for supervision and daily operations of the Hampshire Jail and House of Correction.

37. Deputy Superintendent Cahillane implemented, knew, or should have known that there was a policy or practice of conducting strip searches, without individualized reasonable suspicion, at intake of pre-arraignment prisoners in violation

of the United States Constitution. He had an obligation to correct this practice so that it would conform to the Constitution but instead he allowed it to continue.

38. By January 18, 2002, the law was clearly established that routine intake strip searches of pre-arraignment detainees like the plaintiff and members of the plaintiff class without evaluating for cause were unconstitutional. A decision granting summary judgment to plaintiffs for a similar policy implemented by the Sheriff of Suffolk County, Massachusetts was issued on July 31, 2001. Ford v. City of Boston, 154 F.Supp.2d 131 (D.Mass. 2001) holding the law was clearly established in 1997.

39. By the actions described above, the defendants deprived the named plaintiff and members of the plaintiff class of their clearly established right, guaranteed by the Constitution of the United States, to be free from unreasonable searches.

40. As a direct and proximate result of this conduct, the plaintiffs have suffered injuries as described above.

WHEREFORE the plaintiffs request that this Court:

1. Award compensatory damages and punitive damages to the named plaintiff and to members of the plaintiff class;
2. Award the plaintiffs the costs of this action including reasonable attorney's fees; and
3. Award whatever additional relief this Court deems necessary and appropriate.

JURY DEMAND

A jury trial is hereby demanded.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'H. Friedman', written over a horizontal line.

Howard Friedman

Jennifer Bills

Myong J. Joun

Law Offices of Howard Friedman P.C.

90 Canal Street, 5th Floor

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(617) 742-5858 (fax)

HFriedman@civil-rights-law.com

Date: 1/18/05

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I. (a) PLAINTIFFS

Charles V. Ryan IV on behalf of
himself and others similarly situated

Hampshire

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Howard Friedman, Myong J. Joun, and Jennifer L. Bills
Law Offices of Howard Friedman, P.C.
90 Canal Street, 5th Floor, Boston, MA 02114 (617) 742-4100

DEFENDANTS

Robert J. Garvey, and
Patrick J. Cahillane

2005 JAN 18 AM 11:58
Hampshire

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, INDICATE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

05 - 30017 - MAP

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 PTF DEF
Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2
Incorporated and Principal of Business In Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | LABOR | |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | |

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This action is brought pursuant to 42 U.S.C. §§1983 and 1988 and the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET
NUMBER

DATE

January 18, 2005

SIGNATURE OF PLAINTIFF OR DEFENDANT

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Charles V. Ryan IV et al. v. Robert J. Carney et al.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- NONE
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☐ Western Division ☒
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Howard Friedman, Myong J. Joun, and Jennifer L. BillsADDRESS 90 Canal Street, 5th Floor; Boston, MA 02114-2022TELEPHONE NO. (617) 742-4100